

Shirk, Georgette L

From: Zengotitabengoa, Colleen R
Sent: Monday, January 30, 2017 9:24 AM
To: RALDGroup
Subject: FW: EO update
Attachments: E.O. Protecting the Nation from Foreign Terrorist Entry in the U.S. 1.27.17.docx

Hi all,

There was a lot in the news this weekend about Friday's Executive Order. Attached is the EO and below is a message that Molly sent out to Chiefs and Deputies on Saturday. We expect to get more guidance this week on how to implement the three Eos, but can't predict when anything will come through. The majority of decisions are being made at the DHS or WH level. So while I don't have many details or answers to share, I would ask that you all be ready to jump in to issues when they come up. As I get any new information, I will share with the team.

Thanks,
Colleen

From: Groom, Molly M
Sent: Saturday, January 28, 2017 8:47 AM
To: #CIS OCC CHIEFS ALL; #CIS OCC DEPUTIES ALL
Cc: Carpenter, Dea D; Hinds, Ian G; Miles, John D; Martinez, Janette M; Gentry, Anthony E; Muhletaler, Catherine
Subject: EO update

With the issuance of yesterday's EO, see attached, I wanted to reach out. It has been a busy week with many changes in the immigration world and I expect there is more to come. As you are likely aware, refugee circuit rides were put on hold for those leaving through February 15 even before the EO was signed. There should be more information coming on what is expected now that we have the language of the EO. IO is pausing pick-ups for 730s overseas next week, until we sort out what the EO means. Most of the immediate focus from the most recent EO has been on how to interpret the 212(f) suspension of entry provisions as CBP began implementing last night.

For the two prior EOs, I expect we will see some implementing guidance next week and some direction on how DHS will coordinate and prioritize implementing those orders. There will be a large effort across the Department and the whole Executive Branch focused on implementing these significant changes. Once I understand better how DHS is handling, I will have more of a sense of how we can leverage all of the expertise at OCC to help with this effort. I expect that Phil and I will have a discussion with OGC early next week. So I hope we can have a good discussion once I have a few more facts. Please don't hesitate to reach out if you have any specific questions. Interpretations of the latest EO are being coordinated at high levels over the weekend and I believe there will be implementing guidance sometime next week.

As this all develops, we will need everyone's help, creativity and expertise. Flexible and agile really is the most appropriate mantra and I know how much it actually applies to how you all approach your work. Thanks for your commitment.

Shirk, Georgette L

From: Groom, Molly M
Sent: Monday, January 30, 2017 1:32 PM
To: #CIS OCC ALL
Subject: FW: EO update
Attachments: QA for EO on Protecting the Nation FINAL.DOCX

Please see the below email from Ian.

From: Hinds, Ian G
Sent: Monday, January 30, 2017 1:19:07 PM
To: Groom, Molly M; #CIS OCC CHIEFS ALL; #CIS OCC DEPUTIES ALL
Cc: Carpenter, Dea D; Miles, John D; Martinez, Janette M; Gentry, Anthony E; Muhletaler, Catherine
Subject: EO update

All,

Attached see the DHS OPA-cleared Q/As regarding the EO that was issued on Friday. They are not for distribution to the public. For now, please be advised that if an OCC attorney is asked by the client to provide guidance on how to apply the EO, the matter should be raised through his/her chain of command to OCC leadership for coordination before responding to the client. Other inquiries should be sent to OCOMM or OLA as appropriate.

Thanks,
Ian

Shirk, Georgette L

From: Ahmedani, Mariam
Sent: Tuesday, January 31, 2017 3:26 PM
To: RALDGroup
Subject: FW: Executive Order: PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES - Field Operations Instructions

From: Renaud, Daniel M
Sent: Saturday, January 28, 2017 11:12:16 AM
To: Cowan, Robert M; Looney, Robert V; Muzyka, Carolyn L; Pietropaoli, Lori A; Redman, Kathy A; Gallagher, Kevin E; Goodwin, Shelley M; Robinson, Terri A; Tierney, Therese A; Woo, Ellen Y; FOD-DDs-DDDs-COS; FOD-FODs
Cc: Dominguez, Kathleen P; Upchurch, Evelyn M; Kendrick, Rose M; Quimby, Christopher M (Chris); Rinehart, Brett R; Sapko, Jeffrey M; Spencer, Julie C; Young, Claudia F; Valverde, Michael; Neufeld, Donald W; Kvortek, Lisette E; Farnam, Julie E; Slattery, Shannon E; Renaud, Tracy L; Davidson, Andrew J; Scialabba, Lori L
Subject: Executive Order: PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES - Field Operations Instructions

On January 27, 2017, the President signed an Executive Order that, in part, relates to the suspension of processing of certain immigration benefits. Section 3(c) of the Executive Order invokes sections 212(f) and 217(a)(12) of the INA to temporarily suspend the entry immigrants and nonimmigrants who are from Syria, Iraq, Iran, Somalia, Yemen, Sudan, and Libya for 90 days from the date of the Executive Order.

Effectively immediately and until additional guidance is received, you may not take final action on any petition or application where the applicant is a citizen or national of Syria, Iraq, Iran, Somalia, Yemen, Sudan, and Libya. Field offices may interview applicants for adjustment of status and other benefits according to current processing guidance and may process petitions and applications for individuals from these countries up to the point where a decision would be made. At that point, cases shall be placed on hold until further notice and will be shelved with specific NFTS codes which will be provided through the Regional Offices. Offices are not permitted make any final decision on affected cases to include approval, denial, withdrawal, or revocation.

Please look for additional guidance later this weekend on how to process naturalization applicants from one of the seven countries listed above who are currently scheduled for oath ceremony or whose N-400s have been approved and they are pending scheduling of oath ceremony.

We expect to issue more detailed guidance and procedures as needed in the coming days. Questions or requests for additional clarification may be directed to the Regional Offices through your chain of command.

Daniel M. Renaud
Associate Director | Field Operations Directorate
U.S. Citizenship and Immigration Services
Department of Homeland Security

Shirk, Georgette L

From: Groom, Molly M
Sent: Monday, February 06, 2017 7:53 PM
To: #CIS OCC ATTORNEY ALL
Subject: Litigation update on EO
Attachments: Reply in support of stay motion FINAL --as filed.pdf

Please find attached the government's reply filed this evening in Washington v. Trump. Shortly after this filing, we learned that the 9th Circuit scheduled oral argument tomorrow at 3 pm PST. There is a link for live streaming available which I can forward tomorrow.

Shirk, Georgette L

From: Groom, Molly M
Sent: Monday, February 06, 2017 1:38 PM
To: Parikh, Reena; Zengotitabengoa, Colleen R; Whitney, Ronald W
Cc: Busenkell, Kathleen R (Katie); Allred, Esther R
Subject: RE: Need clarification ASAP on "Guidance Concerning Executive Order on Immigration"

Your understanding is correct—NACARA adjudications for persons in the US should proceed. Thanks

From: Parikh, Reena
Sent: Monday, February 06, 2017 2:31 PM
To: Zengotitabengoa, Colleen R; Whitney, Ronald W; Groom, Molly M
Cc: Busenkell, Kathleen R (Katie); Allred, Esther R
Subject: RE: Need clarification ASAP on "Guidance Concerning Executive Order on Immigration"

Dear Colleen, Ron, Molly:

We received the inquiry below from the asylum HQ NACARA POC. I'm not sure if RAIO previously advised the asylum offices (for that brief period) to hold off on all I-881 adjudications or something (which would be odd because the applicants typically aren't from the affected countries in the EO). Regardless, per Lori's attached guidance on the EO, it seems as if the adjudication of NACARA 203 applications should continue as per usual as the I-881 is an application and NACARA applicants are "individuals in the United States" per the language in the 1st paragraph of Lori's guidance.

Please advise at your earliest convenience.

Thanks so much,
Reena

From: Picciotto, Giacomo A
Sent: Monday, February 06, 2017 2:16 PM
To: Parikh, Reena
Cc: Busenkell, Kathleen R (Katie); Allred, Esther R
Subject: Need clarification ASAP on "Guidance Concerning Executive Order on Immigration"

Reena,

Can you please advise me if based on this attached memo asylum offices can continue to adjudicate applications filed for suspension of deportation and cancellation of removal under NACARA 203?

In the first enumerated paragraph, the first sentence indicates that the E.O. "does not affect USCIS adjudications of applications and petitions filed for or on behalf of individuals in the United States [...]"

As the I-881 if filed by persons who claim eligibility for NACARA 203, I'm not sure that it falls under the category of "applications [...] filed for or on behalf of individuals in the United States."

The last sentence of first paragraph ("this includes, but is not limited to [...]") does not clarify the question as it isn't clear to what "this" refers.

I need to advise all offices as soon as possible. Thank you for your help.

Giacomo A. Picciotto

HQ-Asylum Division – Operations

[REDACTED] Mondays, Wednesdays, Fridays)

Tuesdays and Thursdays: by email or Skype only

(b)(6)

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Shirk, Georgette L

From: Mura, Elizabeth E
Sent: Monday, February 06, 2017 1:53 PM
To: Picciotto, Giacomo A; Parikh, Reena
Cc: Busenkell, Kathleen R (Katie); Allred, Esther R
Subject: RE: Need clarification ASAP on "Guidance Concerning Executive Order on Immigration"

Giacomo,

I also confirmed I-881 adjudications should proceed.

Thanks,
Beth

Elizabeth E. Mura
Operations Branch Chief - Asylum Division
Refugee, Asylum and International Operations Directorate
Dept. of Homeland Security/U.S. Citizenship & Immigration Services
Des [REDACTED]

(b)(6)

From: Picciotto, Giacomo A
Sent: Monday, February 06, 2017 2:42 PM
To: Parikh, Reena
Cc: Busenkell, Kathleen R (Katie); Allred, Esther R; Mura, Elizabeth E
Subject: RE: Need clarification ASAP on "Guidance Concerning Executive Order on Immigration"

Thank you, Reena!

From: Parikh, Reena
Sent: Monday, February 06, 2017 2:40 PM
To: Picciotto, Giacomo A
Cc: Busenkell, Kathleen R (Katie); Allred, Esther R
Subject: RE: Need clarification ASAP on "Guidance Concerning Executive Order on Immigration"

Hi Giacomo,

NACARA 203 adjudications for persons in the U.S. should proceed.

Thanks,
Reena

From: Parikh, Reena
Sent: Monday, February 06, 2017 2:17 PM
To: Picciotto, Giacomo A
Cc: Busenkell, Kathleen R (Katie); Allred, Esther R
Subject: RE: Need clarification ASAP on "Guidance Concerning Executive Order on Immigration"

Giacomo,

We'll confirm with our leadership and get back to you asap.

Thanks,
Reena

From: Picciotto, Giacomo A
Sent: Monday, February 06, 2017 2:16 PM
To: Parikh, Reena
Cc: Busenkell, Kathleen R (Katie); Allred, Esther R
Subject: Need clarification ASAP on "Guidance Concerning Executive Order on Immigration"

Reena,

Can you please advise me if based on this attached memo asylum offices can continue to adjudicate applications filed for suspension of deportation and cancellation of removal under NACARA 203?

In the first enumerated paragraph, the first sentence indicates that the E.O. "does not affect USCIS adjudications of applications and petitions filed for or on behalf of individuals in the United States [...]"

As the I-881 if filed by persons who claim eligibility for NACARA 203, I'm not sure that it falls under the category of "applications [...] filed for or on behalf of individuals in the United States."

The last sentence of first paragraph ("this includes, but is not limited to [...]") does not clarify the question as it isn't clear to what "this" refers.

I need to advise all offices as soon as possible. Thank you for your help.

Giacomo A. Picciotto
HQ-Asylum Division – Operations
[REDACTED] Mondays, Wednesdays, Fridays)
Tuesdays and Thursdays: by email or Skype only

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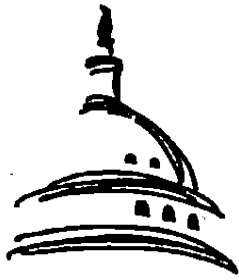
Shirk, Georgette L

From: RALD
Sent: Monday, January 30, 2017 10:04 AM
To: RALDGroup
Subject: FW: CRS report
Attachments: Congressional research service report January 2017 on 212(f).pdf

Follow Up Flag: Follow up
Flag Status: Completed

From: Schwartz, Claudia R
Sent: Monday, January 30, 2017 10:34 AM
To: RALD
Subject: CRS report

Hi all – We've seen this shared by some (about 212(f) authority). CRS report issued last week. Haven't yet read to confirm if accurate. Thought you all may be interested.



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Kate M. Manuel

Acting Section Research Manager

January 23, 2017

Congressional Research Service

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CRS REPORT

Prepared for Members and
Committees of Congress

Summary

The Immigration and Nationality Act (INA) provides that individual aliens outside the United States are “inadmissible”—or barred from admission to the country—on health, criminal, security, and other grounds set forth in the INA. However, the INA also grants the Executive several broader authorities that could be used to exclude certain individual aliens or classes of aliens for reasons that are not specifically prescribed in the INA.

Section 212(f) of the INA is arguably the broadest and best known of these authorities. It provides, in relevant part, that

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

Over the years, Presidents have relied upon Section 212(f) to suspend or otherwise restrict the entry of individual aliens and classes of aliens, often (although not always) in conjunction with the imposition of financial sanctions upon these aliens. Among those so excluded have been aliens whose actions “threaten the peace, security, or stability of Libya”; officials of the North Korean government; and aliens responsible for “serious human rights violations.”

Neither the text of Section 212(f) nor the case law to date suggests any firm legal limits upon the President’s exercise of his authority to exclude aliens under this provision. The central statutory constraint imposed on Section 212(f)’s exclusionary power is that the President must have found that the entry of any alien or class of aliens would be “detrimental to the interests of the United States.” The statute does not address (1) what factors should be considered in determining whether aliens’ entry is “detrimental” to U.S. interests; (2) when and how proclamations suspending or restricting entry should be issued; (3) what factors are to be considered in determining whether particular restrictions are “appropriate”; or (4) how long any restrictions should last. The limited case law addressing exercises of presidential authority under Section 212(f) also supports the view that this provision confers broad authority to bar or impose conditions upon the entry of aliens. Key among these cases is the Supreme Court’s 1993 decision in *Sale v. Haitian Centers Council, Inc.*, which held that the U.S. practice of interdicting persons fleeing Haiti outside U.S. territorial waters and returning them to their home country without allowing them to raise claims for asylum or withholding of removal did not violate the INA or the United Nations Convention Relating to the Status of Refugees. The U.S. practice had been established by Executive Order 12807, which was issued, in part, under the authority of Section 212(f) and “suspend[ed] the entry of aliens coming by sea to the United States without necessary documentation.” However, depending on their scope, future executive actions under Section 212(f) could potentially be seen to raise legal issues that have not been prompted by the Executive’s prior exercises of this authority.

Beyond Section 212(f), other provisions of the INA can also be seen to authorize the Executive to restrict aliens’ entry to the United States. Most notably, Section 214(a)(1) prescribes that the “admission of any alien to the United States as a nonimmigrant shall be for such time and under such conditions as [the Executive] may by regulations prescribe.” Section 215(a)(1) similarly provides that “it shall be unlawful for any alien” to enter or depart the United States “except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe.” For example, President Carter cited Section 215(a)—rather than Section 212(f)—when authorizing the revocation of immigrant and nonimmigrant visas issued to Iranian citizens during the Iran Hostage Crisis.

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The Immigration and Nationality Act (INA) provides that individual aliens outside the United States are “inadmissible”—or generally barred from admission to the country¹—on health, criminal, security, and other grounds set forth in the INA.² However, the INA also grants the Executive several broad authorities that could be used to exclude certain individual aliens or classes of aliens for reasons that are not specifically set forth in the INA. Section 212(f) of the INA is arguably the broadest and best known of these provisions,³ but Sections 214(a)(1) and 215(a)(1) can also be seen to authorize the Executive to restrict aliens’ entry or admission to the United States.⁴

This report provides a brief overview of the Executive’s authority under these provisions of the INA. It begins with and focuses primarily on Section 212(f). It also briefly notes other provisions.

Section 212(f) of the INA

The provisions currently in Section 212(f)—which have been part of the INA since its enactment in 1952⁵—state, in relevant part, that

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.⁶

Legislative history materials from the time of the INA’s enactment suggest that these provisions were seen to grant the President broad authority to bar or impose conditions upon the entry of aliens,⁷ and Presidents over the years have relied upon Section 212(f) to suspend or restrict the entry of various groups of aliens, often (although not always) in conjunction with the imposition of financial sanctions upon them. Among those so excluded have been aliens whose actions

¹ The INA defines “admission” to mean “the lawful entry of an alien into the United States after inspection and authorization by an immigration officer.” INA § 101(a)(13)(A), 8 U.S.C. § 1101(a)(13)(A). The INA is codified in Title 8 of the United States Code, and references to the INA in this report also include references to the corresponding sections of Title 8.

² See INA § 212(a), 8 U.S.C. § 1182(a) (prescribing the inadmissibility of, among others, aliens who have a communicable disease of public health significance; have been convicted of two or more criminal offenses; have engaged in a terrorist activity; are permanently ineligible for citizenship; or have previously voted in violation of any federal, state, or local law). Certain of these grounds of inadmissibility may be waived. See, e.g., INA § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) (authorizing the Executive to waive the 3- and 10-year bars upon the admission of aliens who have been unlawfully present in the United States for more than 180 days if the refusal of admission to the alien would result in “extreme hardship” to a parent or spouse who is a U.S. citizen or lawful permanent resident (LPR)).

³ 8 U.S.C. § 1182(f).

⁴ 8 U.S.C. §§ 1184(a)(1), 1185(a)(1). As is discussed later in this report, the term “entry” is no longer defined for purposes of the INA. See Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), P.L. 104-208, § 301(a), 110 Stat. 3009-575 (Sept. 30, 1996) (amending INA § 101(a)(13) so that it defines “admission,” instead of “entry”). However, at one time, the INA defined the term “entry” to mean “any coming of an alien into the United States, from any foreign port or place or from an outlying possession, whether voluntarily or otherwise.” INA § 101(a)(13), 8 U.S.C. § 1101(a)(13) (1994). See *infra* notes 26-27 and accompanying text.

⁵ 8 U.S.C. § 1182(f).

⁶ See P.L. 82-414, § 212(e), 66 Stat. 188 (June 27, 1952).

⁷ See, e.g., H.R. RPT. 1365, 82d Cong., 2d Sess., at 53 (Feb. 14, 1952) (“The bill vests in the President the authority to suspend the entry of all aliens if he finds that their entry would be detrimental to the interests of the United States, for such period as he shall deem necessary.”).

“threaten the peace, security, or stability of Libya”;⁸ officials of the North Korean government or the Workers’ Party of North Korea;⁹ aliens who have participated in “serious human rights violations”;¹⁰ and others noted in Table 1 below.

Neither the text of Section 212(f) nor the case law to date suggests any firm legal constraints upon the President’s exercise of his authority under Section 212(f), as is explained below. However, future executive actions under INA § 212(f) could potentially be seen to raise legal issues that have not been prompted by the Executive’s prior exercise of this authority.¹¹

Statutory Language and Executive Branch Interpretations

On its face, Section 212(f) would appear to give the President broad authority to preclude or otherwise restrict the entry into the United States of individual aliens or classes of aliens who are outside the United States and lack recognized ties to the country.¹² The central statutory constraint imposed on Section 212(f)’s exclusionary power is that the President must have found that the entry of any aliens or class of aliens would be “detrimental to the interests of the United States” in order to exclude the alien or class of aliens.¹³ The statute does not address (1) what factors should be considered in determining whether aliens’ entry is “detrimental” to U.S. interests; (2) when and how proclamations suspending or restricting entry should be issued; (3) what factors are to be considered in determining whether particular restrictions are “appropriate”; or (4) how long any restrictions should last. There also do not appear to be any regulations addressing the exercise of presidential authority under Section 212(f).

The Department of State’s *Foreign Affairs Manual* (FAM) seemingly provides the only publicly available executive branch guidance on the President’s Section 212(f) authority. In relevant part, the FAM notes that Section 212(f) proclamations “typically” grant the Secretary of State authority to identify individuals covered by the proclamation and to waive its application for foreign policy

⁸ See Executive Order 13726, Blocking Property and Suspending Entry Into the United States of Persons Contributing to the Situation in Libya, 81 Fed. Reg. 23559 (Apr. 21, 2016).

⁹ See Executive Order 13687, Imposing Additional Sanctions With Respect To North Korea, 80 Fed. Reg. 819 (Jan. 6, 2015).

¹⁰ See Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Participate in Serious Human Rights and Humanitarian Law Violations and Other Abuses, 76 Fed. Reg. 49277 (Aug. 9, 2011).

¹¹ Not knowing the form that future restrictions might take, or the grounds upon which such restrictions might be subject to legal challenges, it would be premature to assess whether specific restrictions might be within the Executive’s authority. However, it is important to note that aliens outside the United States who have no ties to the country generally have limited ability to challenge the denial of visas or admission to them. See, e.g., *Shaughnessy v. Mezei*, 345 U.S. 206, 216 (1953) (“Whatever our individual estimate of that policy and the fears on which it rests, respondent’s right to enter the United States depends on the congressional will, and courts cannot substitute their judgment for the legislative mandate.”); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950) (“[A]n alien who seeks admission to this country may not do so under any claim of right. Admission of aliens to the United States is a privilege granted by the sovereign United States Government. Such privilege is granted to an alien only upon such terms as the United States shall prescribe.”). But see *Kleindienst v. Mandel*, 408 U.S. 753, 762-63 (1972) (recognizing that U.S. persons adversely affected by the denial of a visa waiver to an alien outside the United States may have a right to challenge the denial under certain circumstances).

¹² LPRs who leave the United States for a brief period of time are distinguishable from, for example, refugees seeking to be admitted to the United States. See, e.g., *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (discussing due process concerns raised by the application to an LPR of a statute which provided for the exclusion of any alien who “at any time shall have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law”).

¹³ INA § 212(f), 8 U.S.C. § 1182(f).

or other national interests.¹⁴ The FAM also notes that such proclamations may bar entry based on either affiliation or “objectionable” conduct. In addition, it provides that Section 212(f) may reach persons who are inadmissible under other provisions of law, in which case, the “statutory inadmissibilities are to be considered prior to determining whether a Presidential Proclamation applies.”¹⁵ However, the FAM is generally not seen as having the force of law to bind the executive branch.¹⁶ Thus, the Executive would not need to engage in notice-and-comment rulemaking in order to alter particular practices contained in the FAM that have historically been associated with exercises of Section 212(f) authority (e.g., not relying on a 212(f) proclamation to bar the admission of aliens who are inadmissible on other grounds).¹⁷

Judicial Constructions of Section 212(f)

The limited case law addressing exercises of presidential authority under Section 212(f) also supports the view that this provision of the INA confers broad authority to suspend or restrict the entry of aliens. Key among these cases is the Supreme Court’s 1993 decision in *Sale v. Haitian Centers Council, Inc.*, which held that the U.S. practice of interdicting persons fleeing Haiti outside U.S. territorial waters and returning them to their home country without allowing them to raise claims for asylum and withholding of removal did not violate either the INA or the United Nations Convention Relating to the Status of Refugees.¹⁸ The U.S. practice had been established by Executive Order 12807, which was issued, in part, under the authority of Section 212(f) of the INA¹⁹ and “suspend[ed] the entry of aliens coming by sea to the United States without necessary documentation.”²⁰ Although the *Sale* Court was primarily concerned with whether the INA and UN Convention provisions regarding withholding of removal applied extraterritorially,²¹ it is arguably important for understanding the scope of the President’s Section 212(f) authority. In particular, the *Sale* decision arguably helped clarify the relationship between exercises of the authority granted by Section 212(f) and those granted by other provisions of the INA, as well as the meaning of *entry* for purposes of Section 212(f).

¹⁴ 9 FAM § 302.11-3(B)(1), available at <https://fam.state.gov/Fam/FAM.aspx> (last accessed: Jan. 3, 2017).

¹⁵ *Id.*

¹⁶ See, e.g., *Patel v. U.S. Dep’t of State*, No. 11-cv-6-wmc, 2013 U.S. Dist. LEXIS 108592, at *13 (W.D. Wis. Aug. 2, 2013) (“[T]he Foreign Affairs Manual is an internal guideline that sets forth agency practice and procedures. Because internal guidelines and agency manuals like the Foreign Affairs Manual are not subject to [Administrative Procedure Act] APA rulemaking procedures, they lack the force of law and do not bind agency discretion.”).

¹⁷ For more on the constraints of the rulemaking process, see generally CRS Report R41546, *A Brief Overview of Rulemaking and Judicial Review*, by Todd Garvey and Daniel T. Shedd; CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, coordinated by Maeve P. Carey.

¹⁸ 509 U.S. 155, 158-59 (1993). Specifically at issue in *Sale* were the provisions currently in INA § 241(b)(3)(B) and Article 33 of the Convention, which both bar the return of aliens to countries where their life or freedom would be threatened because of their race, religion, nationality, political opinion, or membership in a particular social group. The United States is technically a party to the 1967 UN Protocol Relating to the Status of Refugees, not the 1951 Convention Relating to the Status of Refugees. However, the Protocol incorporated articles 2 to 34 of the Convention, and it is customary for commentators to refer to the Convention, not the Protocol, when discussing these articles.

¹⁹ Executive Order 12,807 also cited INA § 215(a)(1), which provides that “[u]nless otherwise ordered by the President, it shall be unlawful for any alien to depart from or enter ... the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe.” 8 U.S.C. § 1185(a)(1). For further discussion of this provision, see *infra* “Other Provisions of the INA”.

²⁰ See *Interdiction of Illegal Aliens*, 57 Fed. Reg. 23133 (June 1, 1992). President George H.W. Bush initially issued this order, but President Clinton left the order in place without modifications when he took office. It remained in effect at the time of the Court’s decision in *Sale*. See generally 509 U.S. at 165.

²¹ *Sale*, 509 U.S. at 173-88.

In particular, the Court rejected the view of the U.S. Court of Appeals for the Second Circuit (“Second Circuit”) that interdiction was prohibited because of the INA’s prohibition upon the then-Attorney General returning an alien to a country where he or she would be persecuted.²² The Second Circuit had reached this conclusion by noting that the Attorney General was the President’s “agent” in matters of immigration.²³ Therefore, it found that INA’s prohibition on the Attorney General returning aliens to countries where the alien’s life or freedom would be threatened because of the alien’s race, religion, nationality, political opinion, or membership in a particular social group should be imputed to the rest of the executive branch.²⁴ The Supreme Court disagreed, however, holding that the interdiction program created by the President did not “usurp[] authority that Congress has delegated to, or implicate[] responsibilities that it has imposed on, the Attorney General alone.”²⁵ The Court reached this conclusion, in part, because it viewed the INA as restricting only the then-Attorney General’s immigration-related responsibilities under the act. It did not view the INA as restricting the President’s actions in geographic areas outside of where Congress had authorized the Attorney General to act in the immigration context (i.e., outside the United States).²⁶ The upshot of this reasoning was that the Court declined to find that the interdiction program implemented under the authority of Section 212(f) ran afoul of statutory or treaty-based restrictions.

The *Sale* decision also helped define what is meant by the term *entry* as that term is used in Section 212(f). At the time when *Sale* was decided, the INA explicitly defined *entry* to encompass “any coming of an alien into the United States, from any foreign port or place or from an outlying possession, whether voluntarily or otherwise.”²⁷ Therefore, consistent with this definition, the Court distinguished between (1) aliens who are “on our shores seeking admission” or “on the threshold of initial entry,” and (2) aliens who are within the United States after entry, regardless of the legality of that entry.²⁸ While the statutory definition of *entry* that the Court relied upon was deleted from the INA as part of the amendments made by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 (P.L. 104-208),²⁹ the *Sale* Court’s construction of *entry* has persisted in discussions of Section 212(f) and in other contexts.³⁰

²² *Id.* at 171-72. For several decades, the authority to interpret, implement, and enforce the provisions of the INA was primarily vested in the Attorney General. The Attorney General, in turn, delegated this authority to the Immigration and Naturalization Service (INS) within the Department of Justice. Following the establishment of the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002 (P.L. 107-296), the INS was abolished and its functions were generally transferred to DHS. See 6 U.S.C. § 251. Although the INA still refers to the Attorney General in multiple places, such references are generally (although not universally) taken to mean the Secretary of Homeland Security. See generally CRS Legal Sidebar WSLG553, *Does It Matter Whether the INA Says DOJ or DHS?: An Example Involving Revocation of Asylum*, by Kate M. Manuel.

²³ *Haitian Centers Council, Inc. v. McNary*, 969 F.2d 1350, 1360 (2d Cir. 1992).

²⁴ *Id.* (“[W]e reject the government’s suggestion that since [the relevant provision of the INA] restricts actions of only the attorney general, the President might in any event assign the same “return” function to some other government official. Congress understood that the President’s agent for dealing with immigration matters is the attorney general, and we would find it difficult to believe that the proscription of [the INA]—returning an alien to his persecutors—was forbidden if done by the attorney general but permitted if done by some other arm of the executive branch.”).

²⁵ *Sale*, 509 U.S. at 172.

²⁶ *Id.* at 173. See also INA § 103(a)(1), 8 U.S.C. § 1103(a)(1) (“The Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens, except insofar as this chapter or such laws relate to the powers, functions, and duties conferred upon the President....”).

²⁷ INA § 101(a)(13), 8 U.S.C. § 1101(a)(13) (1994).

²⁸ *Sale*, 509 U.S. at 174.

²⁹ P.L. 104-208, § 301(a), 110 Stat. 3009-575 (amending Section 101(a)(13) of the INA to define *admission*, instead of (continued...))

Lower court decisions provide some further discussion of exercises of 212(f) authority that would seem to be consistent with *Sale*. The most recent of these, an unpublished 2003 decision by the Second Circuit in *Sesay v. Immigration and Naturalization Service [INS]*, granted deference to the Board of Immigration Appeals' (BIA's) determination that the alien petitioner was ineligible for asylum because a grant of asylum necessarily requires entry, and the petitioner's entry was barred by Presidential Proclamation 7062.³¹ Previously, in its 1992 decision in *Haitian Refugee Center, Inc. v. Baker*, the U.S. Court of Appeals for the Eleventh Circuit had noted various precedents characterizing the power to exclude aliens from the country as an "inherent executive power" when opining that Section 212(f) "clearly grants the President broad discretionary authority to control the entry of aliens into the United States."³² A lower court, the U.S. District Court for the Northern District of California, similarly emphasized the breadth of the executive's power over entry in conjunction with its discussion of Section 212(f) in its 1996 decision in *Encuentro del Canto Popular v. Christopher*, stating,

The exclusion of aliens is a fundamental act of sovereignty. The right to do so stems not alone from legislative power but is inherent in the executive power to control the foreign affairs of the nation. When Congress prescribes a procedure concerning the admissibility of aliens, it is not dealing alone with a legislative power. It is implementing an inherent executive power.³³

Collectively, *Sale* and these other decisions suggest that Section 212(f) gives the Executive significant power to bar or impose conditions upon the entry of aliens "on our shores seeking admission" or "on the threshold of initial entry."³⁴ None of these decisions note any limitations upon the President's power under Section 212(f). This silence could, however, be seen, in part, to reflect the arguably limited nature of the Executive's use of its Section 212(f) authority to date. As **Table 1** below illustrates, prior exercises of presidential authority under Section 212(f) have

(...continued)

entry). See *supra* note 5.

³⁰ See, e.g., *Sesay v. INS*, 74 Fed. App'x 84, 86 (2d Cir. 2003) (considering the meaning of "entry" in the course of addressing whether a grant of asylum requires entry into the United States); *Matter of Rosas-Ramirez*, 22 I. & N. Dec. 616, 617 (BIA 1999) (discussing whether adjustment of status while within the United States constitutes an "admission" for purposes of INA § 237(a)(2)(A)(iii), and noting that admission is defined, in part, in terms of "entry").

³¹ 74 Fed. App'x at 86. The BIA is the highest administrative tribunal for interpreting and applying immigration law. The Second Circuit noted, but did not address, arguments as to the relationship between Sections 212(d) and 212(f) in its decision. The Secretary of Homeland Security's authority to parole aliens into the United States under Section 212(d), however, could be seen as a counterpart to the President's authority under Section 212(f) in that the President may "parole"—or permit the entry into the United States—almost any alien, regardless of whether the alien is subject to one or more of the grounds of inadmissibility set forth in Section 212(a). See INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A) ("The Attorney General [later, Secretary of Homeland Security] may [subject to certain restrictions involving refugees and alien laborers] in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States....").

³² 953 F.2d 1498, 1506-08 (11th Cir. 1992).

³³ 930 F. Supp. 1360, 1365 (N.D. Cal. 1996) (quoting *Knauff v. Shaughnessy*, 338 U.S. 537 (1949) (upholding the executive branch's determination to exclude the alien wife of a former U.S. servicemember, who was eligible for admission under the War Brides Act of 1945, because of concerns that her admission would endanger public safety)). The *Christopher* case arose from a challenge to the denial or revocation of visas to certain Cubans pursuant to Presidential Proclamation 5377, which suspended the entry of individuals whom the Secretary of State (or a designee) considered to be officers or employees of the Cuban government or Cuban Communist Party. As the district court noted, although the plaintiffs at times seem to have suggested that Section 212(f) itself is invalid, their argument was best construed as being that Presidential Proclamation 5377 was invalid because it conflicted with Section 901 of the Foreign Relations Authorization Act for FY1988-1989. *Id.* at 1363.

³⁴ *Sale*, 509 U.S. at 174.

differed in terms of which and how many aliens are subject to exclusion. In no case to date, though, has the Executive purported to take certain types of action, such as barring all aliens from entering the United States for an extended period of time or explicitly distinguishing between categories of aliens based on their religion. Any such restrictions could potentially be seen to raise legal issues that were not raised by prior exclusions. For example, if the Executive were to seek to bar the entry of all aliens, as immigrants or nonimmigrants, for an extended time, questions could be raised about whether the President's action was consistent with Congress's intent in enacting statutes which prescribe criteria for the issuance of family- and employment-based immigrant and nonimmigrant visas and authorize the issuance of certain numbers of such visas each year.³⁵ Similarly, if the President were to purport to exclude aliens based on their religion, an argument could potentially be made that this action is in tension with U.S. treaty obligations³⁶ or the First Amendment.³⁷ (Distinctions between aliens based on nationality, in contrast, have historically been viewed as a routine feature of immigration legislation and subjected to deferential "rational basis" review by the courts.³⁸)

Table 1. Categories of Aliens Excluded under INA § 212(f)

Arranged Chronologically, from the Most to the Least Recent,
by the Date of Their Publication in the *Federal Register*

Date & President	Nature of the Exclusion
2016, Apr. 21 – Obama <i>Executive Order 13726</i> , 81 Fed. Reg. 23559	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have "contributed to the situation in Libya" in specified ways (e.g., engaging in "actions or policies that threaten the peace, security, or stability" of that country or may lead to or result in the

³⁵ For example, Section 203(a)(1) provides that "[q]ualified immigrants who are the unmarried sons or daughters of citizens of the United States *shall* be allocated visas in a number not to exceed 23,400" (with some additions possible) each year. See 8 U.S.C. § 1153(a)(1). "Shall" has been construed to indicate mandatory agency action when used in other contexts. See, e.g., *Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S. Ct. 1979, 1983 (2016); *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1977 (2016); *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923, 1931 (2016).

³⁶ For example, Article 2 of the International Covenant on Civil and Political Rights provides that "[e]ach State Party ... undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind" based on religion, among other things. United Nations, Human Rights, Office of the High Commissioner, International Covenant on Civil and Political Rights, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (last accessed: Jan. 14, 2017). The United States ratified this Convention in 1992, with certain reservations, understandings, and declarations. See, e.g., Kristina Ash, *U.S. Reservations to the International Covenant on Civil and Political Rights: Credibility Maximization and Global Influence*, 3 NW. J. INT'L HUM. RTS. 1, 2 (2005). However, "Congress has not made the treaty enforceable in U.S. courts," and commentators have disagreed as to whether it or other provisions of law (e.g., the First Amendment) could serve as basis for invalidating the exclusion of certain aliens because of their religion. See, e.g., Debra Cassens Weiss, *Would SCOTUS Uphold Trump's Plan to Bar Muslim Immigrants*, ABA J., Dec. 9, 2015, http://www.abajournal.com/news/article/would_scotus_uphold_trumps_plan_to_bar_muslim_immigrants.

³⁷ Aliens outside the United States without recognized ties to the country might have difficulty in maintaining such a challenge. See *id.* However, in certain cases, a ban on the entry of persons based on religion could potentially be seen to impinge upon the First Amendment rights of U.S. citizens by, for example, excluding officers and teachers of that religion. Cf. *Kleindienst v. Mandel*, 408 U.S. 753, 762-63 (1972) (recognizing that U.S. persons whose constitutional rights are adversely affected by the denial of a visa way to an alien outside the United States may have the right to challenge the denial in certain circumstances).

³⁸ See, e.g., *Rajah v. Mukasey*, 544 F.3d 427, 435-36 (2d Cir. 2008) (quoting an earlier decision to the effect that the "most exacting level of scrutiny that we will impose on immigration legislation is rational basis review"); *Narenji v. Civiletti*, 617 F.2d 745, 748 (D.C. Cir. 1980) ("[C]lassifications among aliens based upon nationality are consistent with due process and equal protection if supported by a rational basis....").

Date & President	Nature of the Exclusion
	misappropriation of Libyan state assets)
2016, Mar. 18 – Obama <i>Executive Order 13722, 81 Fed. Reg. 14943</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have engaged in certain transactions involving North Korea (e.g., selling or purchasing metal, graphite, coal, or software directly or indirectly to or from North Korea, or to persons acting for or on behalf of the North Korean government or the Workers' Party of Korea)
2015, Nov. 25 – Obama <i>Executive Order 13712, 80 Fed. Reg. 73633</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have "contributed to the situation in Burundi" in specified ways (e.g., engaging in "actions or policies that threaten the peace, security, or stability of Burundi," or "undermine democratic processes or institutions" in that country)
2015, Apr. 2 – Obama <i>Executive Order 13694, 80 Fed. Reg. 18077 (later amended by Executive Order 13757, 82 Fed. Reg. 1 (Jan. 3, 2017))</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have engaged in "significant malicious cyber-enabled activities" (e.g., harming or significantly compromising the provision of services by a computer or computer network that supports an entity in a critical infrastructure sector)
2015, Mar. 11 – Obama <i>Executive Order 13692, 80 Fed. Reg. 12747</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have "contributed to the situation in Venezuela" in specified ways (e.g., engaging in actions or policies that undermine democratic processes or institutions, significant acts of violence or conduct that constitutes a serious abuse or violation of human rights)
2015, Jan. 6 – Obama <i>Executive Order 13687, 80 Fed. Reg. 819</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens with specified connections to North Korea (e.g., officials of the North Korean government or the Workers' Party of Korea)
2014, Dec. 24 – Obama <i>Executive Order 13685, 79 Fed. Reg. 77357</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have engaged in certain transactions involving the Crimea region of Ukraine (e.g., materially assisting, sponsoring, or providing financial, material, or technological support for, or goods or services to or in support of, persons whose property or interests are blocked pursuant to the order)
2014, May 15 – Obama <i>Executive Order 13667, 79 Fed. Reg. 28387</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have contributed to the conflict in the Central African Republic in specified ways (e.g., engaging in actions or policies that threaten the peace, security, or stability of that country, or that threaten transitional agreements or the political transition process)
2014, Apr. 7 – Obama <i>Executive Order 13664, 79 Fed. Reg. 19283</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have engaged in certain conduct as to South Sudan (e.g., actions or policies that "have the purpose or effect of expanding or extending the conflict" in that country, or obstructing reconciliation or peace talks or processes)
2014, Mar. 24 – Obama <i>Executive Order 13662, 79 Fed. Reg. 16169</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have contributed to the situation in Ukraine in specified ways (e.g., operating in the financial services, energy, metals and mining, engineering, or defense and related materiel sectors of the Russian Federation economy)
2014, Mar. 19 – Obama <i>Executive Order 13661, 79 Fed. Reg. 15535</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens determined to have contributed to the situation in Ukraine in specified ways (e.g., officials of the government of the Russian Federation, or persons who operate in the arms or related materiel sector)
2014, Mar. 10 – Obama <i>Executive Order 13660, 79 Fed.</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens determined to have contributed to the situation in Ukraine in specified ways (e.g., engagement in or responsibility for misappropriation of state assets of

Date & President	Nature of the Exclusion
Reg. 13493 2013, June 5 – Obama Executive Order 13645, 78 Fed. Reg. 33945	Ukraine or of economically significant entities in that country) Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who have engaged in certain conduct related to Iran (e.g., materially assisting, sponsoring, or providing support for, or goods or services to or in support of, any Iranian person included on the list of Specially Designated Nationals and Blocked Persons)
2012, Oct. 12 – Obama Executive Order 13628, 77 Fed. Reg. 62139	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have engaged in certain actions involving Iran (e.g., knowingly transferring or facilitating the transfer of goods or technologies to Iran, to entities organized under Iranian law or subject to Iranian jurisdiction, or to Iranian nationals, that are likely to be used by the Iranian government to commit serious human rights abuses against the Iranian people)
2012, July 13 – Obama Executive Order 13619, 77 Fed. Reg. 41243	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to threaten the peace, security, or stability of Burma in specified ways (e.g., participation in the commission of human rights abuses, or importing or exporting arms or related materiel to or from North Korea)
2012, May 3 – Obama Executive Order 13608, 77 Fed. Reg. 26409	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have engaged in certain conduct as to Iran and Syria (e.g., facilitating deceptive transactions for or on behalf of any person subject to U.S. sanctions concerning Iran and Syria)
2012, Apr. 24 – Obama Executive Order 13606, 77 Fed. Reg. 24571	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens determined to have engaged in specified conduct involving “grave human rights abuses by the governments of Iran and Syria via information technology” (e.g., operating or directing the operation of communications technology that facilitates computer or network disruption, monitoring, or tracking that could assist or enable serious human rights abuses by or on behalf of these governments)
2011, Aug. 9 – Obama Proclamation 8697, 76 Fed. Reg. 49277	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who participate in serious human rights and humanitarian law violations and other abuses (e.g., planning, ordering, assisting, aiding and abetting, committing, or otherwise participating in “widespread or systemic violence against any civilian population” based, in whole or in part, on race, color, descent, sex, disability, language, religion, ethnicity, birth, political opinion, national origin, membership in a particular social group, membership in an indigenous group, or sexual orientation or gender identity)
2011, July 27 – Obama Proclamation 8693, 76 Fed. Reg. 44751	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens subject to U.N. Security Council travel bans and International Emergency Economic Powers Act sanctions
2009, Jan. 22 – Bush Proclamation 8342, 74 Fed. Reg. 4093	Suspending the entry into the United States, as immigrants or nonimmigrants, of foreign government officials responsible for failing to combat trafficking in persons
2007, July 3 – Bush Proclamation 8158, 72 Fed. Reg. 36587	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons responsible for policies or actions that threaten Lebanon’s sovereignty and democracy (e.g., current or former Lebanese government officials and private persons who “deliberately undermine or harm Lebanon’s sovereignty”)
2006, May 16 – Bush Proclamation 8015, 71 Fed. Reg. 28541	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons responsible for policies or actions that threaten the transition to democracy in Belarus (e.g., Members of the government of Alyaksandr Lukashenka and other persons involved in policies or actions that “undermine or injure democratic institutions or impede the transition to democracy in Belarus”)
2004, Jan. 14 – Bush Proclamation 7750, 69 Fed. Reg.	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons who have engaged in or benefitted from corruption in specified ways (e.g., current or former public officials whose solicitation or acceptance of articles of

Date & President	Nature of the Exclusion
2287	monetary value or other benefits has or had "serious adverse effects on the national interests of the United States")
2002, Feb. 26 – Bush <i>Proclamation 7524, 67 Fed. Reg. 8857</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons responsible for actions that threaten Zimbabwe's democratic institutions and transition to a multi-party democracy (e.g., Senior members of the government of Robert Mugabe, persons who through their business dealings with Zimbabwe government officials derive significant financial benefit from policies that undermine or injure Zimbabwe's democratic institutions)
2001, June 29 – Bush <i>Proclamation 7452, 66 Fed. Reg. 34775</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons responsible for actions that threaten international stabilization efforts in the Western Balkans, or are responsible for wartime atrocities in that region
2000, Oct. 13 – Clinton <i>Proclamation 7359, 65 Fed. Reg. 60831</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who plan, engage in, or benefit from activities that support the Revolutionary United Front or otherwise impede the peace process in Sierra Leone
1999, Nov. 17 – Clinton <i>Proclamation 7249, 64 Fed. Reg. 62561</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens responsible for repression of the civilian population in Kosovo or policies that obstruct democracy in the Federal Republic of Yugoslavia (FRY) or otherwise lend support to the government of the FRY and the Republic of Serbia
1998, Jan. 16 – Clinton <i>Proclamation 7062, 63 Fed. Reg. 2871</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of members of the military junta in Sierra Leone and their family
1997, Dec. 16 – Clinton <i>Proclamation 7060, 62 Fed. Reg. 65987</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of senior officials of the National Union for the Total Independence of Angola (UNITA) and adult members of their immediate families
1996, Nov. 26 – Clinton <i>Proclamation 6958, 61 Fed. Reg. 60007</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of members of the government of Sudan, officials of that country, and members of the Sudanese armed forces
1996, Oct. 7 – Clinton <i>Proclamation 6925, 61 Fed. Reg. 52233</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons who "formulate, implement, or benefit from policies that impede Burma's transition to democracy" and their immediate family members
1994, Oct. 27 – Clinton <i>Proclamation 6749, 59 Fed. Reg. 54117</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of certain aliens described in U.N. Security Council Resolution 942 (e.g., officers of the Bosnian Serb military and paramilitary forces and those acting on their behalf, or persons found to have provided financial, material, logistical, military, or other tangible support to Bosnian Serb forces in violation of relevant U.S. Security Council resolutions)
1994, Oct. 5 – Clinton <i>Proclamation 6730, 59 Fed. Reg. 50683</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who formulate, implement, or benefit from policies that impede Liberia's transition to democracy and their immediate family
1994, May 10 – Clinton <i>Proclamation 6685, 59 Fed. Reg. 24337</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens described in U.N. Security Council Resolution 917 (e.g., officers of the Haitian military, including the police, and their immediate families; major participants in the 1991 Haitian coup d'etat)
1993, Dec. 14 – Clinton <i>Proclamation 6636, 58 Fed. Reg. 65525</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who formulate, implement, or benefit from policies that impede Nigeria's transition to democracy and their immediate family
1993, June 23 – Clinton <i>Proclamation 6574, 58 Fed. Reg.</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons who formulate or benefit from policies that impede Zaire's transition to democracy and their immediate family

Date & President	Nature of the Exclusion
34209	
1993, June 7 – Clinton <i>Proclamation 6569, 58 Fed. Reg. 31897</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons who formulate, implement, or benefit from policies that impede the progress of negotiations to restore a constitutional government to Haiti and their immediate family
1992, June 1 – Bush <i>Executive Order 12807, 57 Fed. Reg. 23133</i>	Making provisions to enforce the suspension of the entry of undocumented aliens by sea and the interdiction of any covered vessel carrying such aliens
1988, Oct. 26 – Reagan <i>Proclamation 5887, 53 Fed. Reg. 43184</i>	Suspending the entry of specified Nicaraguan nationals into the United States as nonimmigrants (e.g., officers of the Nicaraguan government or the Sandinista National Liberation Front holding diplomatic or official passports)
1988, June 14 – Reagan <i>Proclamation 5829, 53 Fed. Reg. 22289</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of certain Panamanian nationals who formulate or implement the policies Manuel Antonio Noriega and Manuel Solis Palma, and their immediate families
1986, Aug. 26 – Reagan <i>Proclamation 5517, 51 Fed. Reg. 30470</i>	Suspending the entry of Cuban nationals as immigrants with certain specified exceptions (e.g., Cuban nationals applying for admission as immediate relatives under INA § 201(b))
1985, Oct. 10 – Reagan <i>Proclamation 5377, 50 Fed. Reg. 41329</i>	Suspending the entry of specified classes of Cuban nationals as nonimmigrants (e.g., officers or employees of the Cuban government or the Communist Party of Cuba holding diplomatic or official passports)
1981, Oct. 1 – Reagan <i>Proclamation 4865, 46 Fed. Reg. 48107</i>	Suspending the entry of undocumented aliens from the high seas, and directing the interdiction of certain vessels carrying such aliens

Source: Congressional Research Service, based on various sources cited in **Table 1**.

Note: In a number of cases, the exclusions listed in **Table 1** were expressly said to be waivable, in the Executive's discretion, when the entry of a particular alien otherwise subject to exclusion "would not be contrary to the interests of the United States." See, e.g., 50 Fed. Reg. 41329, at § 2 (Oct. 10, 1985).

Other Provisions of the INA

Beyond Section 212(f), other provisions of the INA can also be seen to authorize the Executive to restrict aliens' entry to the United States.³⁹ Most notably, Section 214(a)(1) prescribes that the "admission of any alien to the United States as a nonimmigrant shall be for such time and under such conditions as [the Executive] may by regulations prescribe."⁴⁰ (Nonimmigrants are aliens admitted to the United States for a specific period of time and purpose pursuant to one of the

³⁹ In addition, yet other provisions of the INA could be seen to give the Executive discretion as to whether certain categories of aliens are admitted. For example, Section 207(a)(2) of the INA could be seen to give the Executive broad discretion in determining how many aliens are admitted to the United States as refugees each year. See 8 U.S.C. § 1157(a)(2). Other provisions outside immigration law could also apply. See National Defense Authorization Act for FY2017, P.L. 114-328, §§ 1261-1265, Stat.—(Dec. 23, 2016) (sanctions for human rights abusers); Consolidated Appropriations Act, P.L. 114-113, § 7031(c), 129 Stat. 2755 (Dec. 18, 2015) (providing that certain foreign officials involved in "significant corruption" and their immediate family are ineligible for entry to the United States); Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012, P.L. 112-208, §§ 404-406, 126 Stat. 1505-1509 (Dec. 14, 2012) (excluding certain aliens involved in human rights abuses).

⁴⁰ 8 U.S.C. § 1184(a)(1).

“lettered” visas set forth in Section 101(a)(15) of the INA.⁴¹ Section 215(a)(1) similarly provides that “it shall be unlawful for any alien” to enter or depart the United States “except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe.”⁴² In the past, the Executive has relied upon Section 215(a)(1), in particular, to exclude certain aliens. For example, President Carter cited to Section 215(a) when authorizing the revocation of immigrant and nonimmigrant visas issued to Iranians during the Iran Hostage Crisis.⁴³

The current Section 215(a) was enacted as part of the INA in 1952.⁴⁴ However, similar language appeared in earlier immigration-related statutes.⁴⁵ Both the earlier language and the initial version of Section 215(a) granted the President the power to impose additional restrictions upon aliens’ entry into and departure from the United States during times of war and, in some cases, “national emergency.”⁴⁶ The President’s exclusion of certain aliens under this authority⁴⁷ was upheld in several court cases, the most notable of which was arguably the Supreme Court’s 1950 decision in *United States ex rel. Knauff v. Shaughnessy*.⁴⁸ There, the Court rejected a challenge to the exclusion of a German “war bride” under regulations promulgated pursuant to Presidential Proclamation 2523, which was itself issued under the authority of a predecessor of Section 215(a).⁴⁹ In so doing, the Court rejected the excluded bride’s argument that both the regulations and the underlying statute constituted an impermissible delegation of legislative power, reasoning that “[t]he exclusion of aliens is a fundamental act of sovereignty. The right to do so stems not

⁴¹ *Id.* § 1101(a)(15) (defining an “immigrant” to mean “every alien *except* an alien who is within one of the following classes of nonimmigrant aliens....”) (emphasis added).

⁴² *Id.* § 1184(a)(1).

⁴³ See Executive Order 12172, Delegation of Authority With Respect to Entry of Certain Aliens Into the United States, 44 Fed. Reg. 67947, 67947 (Nov. 28, 1979) (authorizing the Secretary of State and the Attorney General to exercise “in respect of Iranians holding *nonimmigrant visas*, the authority conferred upon the President by section 215(a)(1) of the Act of June 27, 1952 (8 USC 1185)....”) (emphasis added); Executive Order 12206, Amendment of Delegation of Authority with Respect to Entry of Certain Aliens Into the United States,” 45 Fed. Reg. 24101, 24201 (Apr. 7, 1980) (amending Executive Order 12172 to cover *immigrant*, as well as nonimmigrant visas). The exclusion addressed in *Sale* was also effectuated, in part, under the authority of Section 215(a). See *supra* note 19.

⁴⁴ See P.L. 82-414, § 212(e), 66 Stat. 190 (June 27, 1952).

⁴⁵ See P.L. 65-164, 40 Stat. 559 (May 22, 1918) (“[W]hen the United States is at war, if the President shall find that public safety requires that restrictions and prohibitions ... be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful [f]or any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe.”); P.L. 77-113, 55 Stat. 252 (June 20, 1941) (similar).

⁴⁶ See 66 Stat. 190 (war and national emergency); 55 Stat. 252 (war); 40 Stat. 559 (war).

⁴⁷ See, e.g., Proclamation 3,004, Control of Persons Leaving or Entering the United States, 18 Fed. Reg. 489 (Jan. 17, 1953) (President Truman relying, in part, on a predecessor to Section 215(a) to impose restrictions on the entry of aliens into the Panama Canal Zone and American Samoa); Proclamation 2,850, 14 Fed. Reg. 5173 (Aug. 19, 1949) (President Truman relying, in part, on a predecessor to Section 215(a) in excluding aliens whose entry executive officials deem “would be prejudicial to the interests of the United States”); Proclamation 2,523, Control of Persons Entering and Leaving the United States, 6 Fed. Reg. 2617 (Nov. 18, 1941) (similar, President Roosevelt).

⁴⁸ 338 U.S. 537 (1950). See also *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953) (noting the President’s power to exclude aliens in the course of finding that an alien who was so excluded, but whom no other country would accept, was not entitled to release into the United States). The *Mezei* Court, in particular, cited a number of precedents for the proposition that “the power to expel or exclude aliens [is] a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.” 345 U.S. at 210 (citing *Harisiades v. Shaughnessy*, 342 U.S. 580 (1952); *The Chinese Exclusion Case*, 130 U.S. 581 (1889); and *Fong Yue Ting v. United States*, 149 U.S. 698 (1893)).

⁴⁹ *Knauff*, 338 U.S. at 540-42.

from legislative power but is inherent in the executive power to control the foreign affairs of the nation.”⁵⁰ Therefore, in the Court’s view, Congress could not have run afoul of the non-delegation doctrine by authorizing the President to exercise this power “for the best interests of the country” during wartime because the President already possessed such authority.⁵¹ The *Knauff* Court similarly rejected the argument that the regulations in question were not “reasonable,” as required by the statutory authority under which they were issued—which in relevant part, made it unlawful for an alien to enter the United States “except under such reasonable rules ... as the President may prescribe.”⁵² The Court did so because it viewed the regulations excluding aliens whose entry was “deemed prejudicial to the public interest” as “reasonable in the circumstances of the period for which they were authorized, namely, the national emergency of World War II.”⁵³

The statutory language regarding war and national emergency—which arguably factored into the Court’s decision in *Knauff*—was deleted from Section 215(a) in 1978.⁵⁴ However, it seems unlikely that this deletion would serve as a basis for overruling the *Knauff* Court’s conclusions about whether the power in question was impermissibly delegated to the Executive,⁵⁵ or about what constitutes a “reasonable” regulation for purposes of Section 215(a).⁵⁶ *Knauff*’s statements about the inherent power of nations to exclude aliens outside the United States with no recognized ties to the country would also generally seem to remain good law.⁵⁷

Author Contact Information

Kate M. Manuel
Acting Section Research Manager
kmanuel@crs.loc.gov, 7-4477

⁵⁰ *Id.* at 542.

⁵¹ *Id.* at 542-43 (“[T]here is no question of inappropriate delegation of legislative power involved here.”). The non-delegation doctrine precludes Congress from handing over its legislative powers to other branches of the federal government. However, Congress may “confer[] decisionmaking authority upon agencies, so long as it ‘lays down by legislative act an intelligible principle to which the person or body authorized to [act] is directed to conform.’” See *Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 472 (2001) (internal quotations omitted).

⁵² 338 U.S. at 544.

⁵³ *Id.*

⁵⁴ P.L. 95-426, § 707(a), 92 Stat. 992-93 (Oct. 7, 1978).

⁵⁵ Cf. Cass R. Sunstein, *Nondelegation Canons*, 67 U. CHI. L. REV. 315, 315 (2000) (“Since 1935, the Supreme Court has not struck down an act of Congress on nondelegation grounds....”).

⁵⁶ There does not appear to be any court cases establishing what is meant by the term “reasonable regulations” for purposes of Section 215(a) and its predecessors. However, courts may grant considerable deference to the Executive’s determinations in this area, given the “plenary power” that the political branches are generally seen to have over immigration. See, e.g., *Mathews v. Diaz*, 426 U.S. 67, 81 (1976) (“For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government.”).

⁵⁷ See, e.g., *Jean v. Nelson*, 472 U.S. 847, 875 (1985) (“It is in the area of entry] that the Government’s interest in protecting our sovereignty is at its strongest and that individual claims to constitutional entitlement are the least compelling.”); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (citing cases finding that the power to exclude is a “fundamental sovereign attribute”); *Kleindeinst v. Mandel*, 408 U.S. 753, 765 (similar) (1972). Certain limits to this power have, however, been recognized, particularly as to aliens with recognized ties to the United States or who would need to be detained in the United States to effectuate their exclusion. See, e.g., CRS Legal Sidebar WSLG1695, *Supreme Court to Hear Challenge to Aliens’ Detention Pending Removal Proceedings*, by Kate M. Manuel.

From: Franke, Evan R
To: Lay, Dorothea B (Thea); Lonegan, Bryan K; Groom, Molly M; Miles, John D; Roll, Annemarie E; Busch, Philip B; Zengotitabengoa, Colleen R; Whitney, Ronald W
Subject: RE: URGENT: Border patrol refusing to comply with court order at Dulles
Date: Sunday, January 29, 2017 10:32:30 AM



(b)(5)

Evan

From: Lay, Dorothea B (Thea)
Sent: Sunday, January 29, 2017 10:13:58 AM
To: Lonegan, Bryan K; Groom, Molly M; Franke, Evan R; Miles, John D; Roll, Annemarie E; Busch, Philip B; Zengotitabengoa, Colleen R; Whitney, Ronald W
Subject: RE: URGENT: Border patrol refusing to comply with court order at Dulles



(b)(5)

From: Lonegan, Bryan K
Sent: Sunday, January 29, 2017 10:06 AM
To: Groom, Molly M; Franke, Evan R; Miles, John D; Roll, Annemarie E; Busch, Philip B; Zengotitabengoa, Colleen R; Whitney, Ronald W; Lay, Dorothea B (Thea)
Subject: RE: URGENT: Border patrol refusing to comply with court order at Dulles



(b)(5)

From: Groom, Molly M
Sent: Sunday, January 29, 2017 9:28:39 AM
To: Franke, Evan R; Miles, John D; Roll, Annemarie E; Busch, Philip B; Zengotitabengoa, Colleen R; Lonegan, Bryan K; Whitney, Ronald W; Lay, Dorothea B (Thea)
Subject: RE: URGENT: Border patrol refusing to comply with court order at Dulles



(b)(5)

From: Groom, Molly M
Sent: Sunday, January 29, 2017 9:26:44 AM
To: Franke, Evan R; Miles, John D; Roll, Annemarie E; Busch, Philip B; Zengotitabengoa, Colleen R; Lonegan, Bryan K; Whitney, Ronald W; Lay, Dorothea B (Thea)
Subject: FW: URGENT: Border patrol refusing to comply with court order at Dulles

From: Ruppel, Joanna
Sent: Friday, February 03, 2017 12:02 PM
To: RAIO - ALL1
Subject: Executive Order and Refugee Processing

RAIO Colleagues,

As you know, last week we made the decision to temporarily suspend departures for both the Refugee Affairs Division (RAD) and International Operations (IO) circuit rides until February 15. We also temporarily suspended refugee interviews at all International field offices. Following further consultations with the Department of State Bureau for Population, Refugees and Migration (PRM), we have jointly decided that the remaining 2nd quarter circuit ride and USCIS international field office interview schedule will be completely revised. PRM is instructing the Refugee Support Centers to cancel this quarter's USCIS circuit rides and field office interviews at this time.

RAIO will be working with PRM in coming weeks and months to discuss when circuit rides and field office interviews will resume and to identify any interviews that will be needed to reach this year's revised goal of 50,000 admissions, as well as the FY18 ceiling, which has not yet been determined. At this time, we do not have any information to share on 3rd and 4th quarter circuit rides or field office processing, but we will continue to share additional information as it becomes available.

I would like to encourage you to review the RAIO ECN site that we have begun building to share information with you, as well as to provide a space for questions and collaboration:

2017 Executive Orders

You will find there a place where you may submit questions anonymously. Or, you can identify yourself in case we want to get back to you with any follow up questions to clarify your question. While the site tracks number of "responses," that actually means number of questions. It may take a bit of time, but once we have a number of questions, we will work on posting the questions and responses. Also, something to watch for in the coming weeks is that we will be seeking your views on certain implementation issues through the feedback section of that ECN site (such as additional information it would be helpful to know when processing a benefit request).

Thank you for your support, flexibility and patience.

Joanna

Joanna Ruppel
Acting Associate Director
USCIS Refugee, Asylum and International Operations Directorate

 (b)(6)

From: Radel, David M
Sent: Thursday, February 02, 2017 2:54 PM
To: #ZLA All Employees
Subject: FW: EO Guidance
Attachments: EO 1-27 implementation guidance signed and dated.pdf

Hello Everyone,

Great news – we can proceed with our normal processing of cases from the seven countries implicated in the recent Executive Order. Please remove the holds from the cases that we recently placed on hold and resume case processing, to include decision issuance. It's back to business as usual!

If you have any questions or concerns, just let me know.

All the best,
David

From: Kim, Ted H
Sent: Thursday, February 02, 2017 2:40 PM
To: Agullar, Kimberly M; Bardini, Emilia M; Boyle, Meghann W; Bundy, Kelsey D; Daum, Robert L; Flanagan, Lisa M; Gadson, Irvin C; Ho, Cheri L; Hong, Marianne X; Hussey, Jedidah M; Kline, Jennifer M; Madsen, Kenneth S; Menges, Patricia A; Papazian, Varsenik L; Radel, David M; Raufer, Susan; Rellis, Jennifer L; Varghese, Mathew C; Varghese, Sunil R
Cc: Caudill-Mirillo, Ashley B; Kirkland, Brooke A; Lafferty, John L; Mura, Elizabeth E; Pilotti, David A; Potts-Hansen, Stephanie N; Roberts, Rhonda J; Schaper, Michael C; Tanner, Rebecca S
Subject: FW: EO Guidance

Attached is the written formal USCIS guidance that we have been waiting for that allows us to resume adjudicating affirmative asylum cases as normal.

I also checked with CSPED, and if you are asked by members of the public if we are operating "business as usual," we can respond affirmatively. If the inquiries are more complicated than that or relate to other aspects of the Executive Orders, please continue to forward those to me for response by HQ CSPED.

Thanks,
Ted

From: Farnam, Julie E
Sent: Thursday, February 02, 2017 5:32 PM
To: Button, Maria G (Gemma); Hatchett, Dolline L; Patching, Laura D; Levine, Laurence D; Rosenberg, Ronald M (Ron); Lafferty, John L; Strack, Barbara L; Ruppel, Joanna; McCament, James W; Neufeld, Donald W; Alfonso, Angelica M; Melero, Mariela; Groom, Molly M; Busch, Phillip B; Meckley, Tammy M; Davidson, Andrew J; Valverde, Michael; Renaud, Daniel M; Symons, Craig M; Kovarik, Kathy N; Risch, Carl C; Rather, Michael B; Hamilton, Cristina A; Tynan, Natalie S; Nimick, Charles L (Locky); Dumas, Jessica L; Campagnolo, Donna P; Cox, Sophia; Hinds, Ian G; Zengotitabengoa, Colleen R; Rogers, Debra A; Herrmann, Mary K; Martin, Heather A; Nicholson, Maura J; Kim, Ted H; Stone, Mary M; Carter, Constance L; Kerns, Kevin J; Borgen, Michael R; Emrich, Matthew D; Moran, Karla; Kovarik Nuebel, Kathy
Cc: Walters, Jessica S; Swanson, Toni; Young, Todd P; Renaud, Tracy L
Subject: RE: EO Guidance

Signed and dated copy attached. Have a good evening!

From: Farnam, Julie E

Sent: Thursday, February 02, 2017 5:20 PM

To: Button, Maria G (Gemma); Hatchett, Dolline L; Patching, Laura D; Levine, Laurence D; Rosenberg, Ronald M (Ron); Lafferty, John L; Strack, Barbara L; Ruppel, Joanna; McCament, James W; Neufeld, Donald W; Alfonso, Angelica M; Melero, Mariela; Groom, Molly M; Busch, Phillip B; Meckley, Tammy M; Davidson, Andrew J; Valverde, Michael; Renaud, Daniel M; Symons, Craig M; Kovarik, Kathy N; Risch, Carl C; Rather, Michael B; Hamilton, Cristina A; Tynan, Natalie S; Nimick, Charles L (Locky); Dumas, Jessica L; Campagnolo, Donna P; Cox, Sophia; Hinds, Ian G; Zengotitabengoa, Colleen R; Rogers, Debra A; Hermann, Mary K; Martin, Heather A; Nicholson, Maura J; Kim, Ted H; Stone, Mary M; Carter, Constance L; Kerns, Kevin J; Borgen, Michael R [REDACTED] Emrich, Matthew D; Moran, Karla; Kovarik Nuebel, Kathy

Cc: Walters, Jessica S; Swanson, Toni; Young, Todd P; Renaud, Tracy L

(b)(6)

Subject: RE: EO Guidance

Please hold off on disseminating just yet. The copy was not dated. I'll send an updated version in just a minute.

From: Farnam, Julie E

Sent: Thursday, February 02, 2017 5:13 PM

To: Button, Maria G (Gemma); Hatchett, Dolline L; Patching, Laura D; Levine, Laurence D; Rosenberg, Ronald M (Ron); Lafferty, John L; Strack, Barbara L; Ruppel, Joanna; McCament, James W; Neufeld, Donald W; Alfonso, Angelica M; Melero, Mariela; Groom, Molly M; Busch, Phillip B; Meckley, Tammy M; Davidson, Andrew J; Valverde, Michael; Renaud, Daniel M; Symons, Craig M; Kovarik, Kathy N; Risch, Carl C; Rather, Michael B; Hamilton, Cristina A; Tynan, Natalie S; Nimick, Charles L (Locky); Dumas, Jessica L; Campagnolo, Donna P; Cox, Sophia; Hinds, Ian G; Zengotitabengoa, Colleen R; Rogers, Debra A; Hermann, Mary K; Martin, Heather A; Nicholson, Maura J; Kim, Ted H; Stone, Mary M; Carter, Constance L; Kerns, Kevin J; Borgen, Michael R [REDACTED] Emrich, Matthew D; Moran, Karla; Kovarik Nuebel, Kathy

Cc: Walters, Jessica S; Swanson, Toni; Young, Todd P; Renaud, Tracy L

(b)(6)

Subject: EO Guidance

Attached please find the EO implementation guidance. OCOMM will also be sending this out to a larger audience and I will post it on the ECN.

Julie Farnam

Senior Advisor

Field Operations Directorate

U.S. Citizenship and Immigration Services

[REDACTED] (b)(6)

This communication, along with any attachments, may contain confidential information and is covered by federal laws governing electronic communications. Electronic communications may also be monitored by the Department of Homeland Security, U.S. Citizenship and Immigration Services. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use, or copying of this message is strictly prohibited. If you have received this in error, please delete this message and all attachments and immediately notify the sender.

Cc: [REDACTED]
Subject: RE: CBP Sworn Statements

(b)(6)

What time?

Can you get the actual document?

The provisions on LPS appear to have been amended by the Secretary already.

From: Mekjian, Gerard J
Sent: Monday, January 30, 2017 11:12 AM
To: Lonegan, Bryan K
Cc: Katz, Jonathan E; Lay, Dorothea B (Thea); Ooi, Maura M
Subject: RE: CBP Sworn Statements

Saturday

.....
Gerard J. Mekjian
Supervisory Asylum Officer / Anti-Human Trafficking Program Coordinator
Refugee, Asylum & International Operations
DHS/CIS
Newark Asylum Office
1200 Wall Street West, 4th Floor
Lyndhurst, NJ 07071

[REDACTED] (b)(6)

From: Lonegan, Bryan K
Sent: Monday, January 30, 2017 11:09 AM
To: Mekjian, Gerard J
Cc: Katz, Jonathan E; Lay, Dorothea B (Thea); Ooi, Maura M
Subject: RE: CBP Sworn Statements

When was this issued? Things have been fast moving and this directive may no longer be valid, but maybe it is.

From: Mekjian, Gerard J
Sent: Monday, January 30, 2017 10:57 AM
To: Lonegan, Bryan K
Cc: Katz, Jonathan E; Lay, Dorothea B (Thea); Ooi, Maura M
Subject: FW: CBP Sworn Statements

You probably have this already, but thought I'd send it to you all any way. Sunil forwarded my email to Lafferty so I don't think HQ was aware of the below.

.....
Gerard J. Mekjian
Supervisory Asylum Officer / Anti-Human Trafficking Program Coordinator
Refugee, Asylum & International Operations
DHS/CIS
Newark Asylum Office
1200 Wall Street West, 4th Floor
Lyndhurst, NJ 07071

[REDACTED]
(b)(6)

From: Mekjian, Gerard J
Sent: Monday, January 30, 2017 10:03 AM
To: Varghese, Sunil R; Raufer, Susan
Subject: CBP Sworn Statements

Below is what was sent out to ERO Field Operations. You may have this already, but thought it worth sending out. Troublesome (among a lot of troublesome things) is that a sworn statement is not being taken for those who withdraw their applications through Form I-275:

To: Assistant Directors, Field Office Directors, and Deputy Field Office Directors
Subject: Guidance on Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States"

Effective immediately, and pursuant to Executive Order entitled, "*Protecting the Nation from Foreign Terrorist Entry into the United States*" (January 27, 2017), all entry into the United States for aliens who are nationals from Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen is hereby suspended in accordance with Section 212(f) of the INA. This includes all non-immigrant classifications, with the exception of those foreign nationals traveling on diplomatic visas, NATO visas, C2 visas for travel to the United Nations, G1, G2, G-3, and G-4 visas. This also includes all immigrant classes of admission, returning resident aliens, refugees, and asylees.

U.S. Customs and Border Protection has provided the following and attached guidance to its employees. Furthermore, the Department of State provided CBP with a letter provisionally revoking all immigrant and non-immigrant visas for nationals of Iran, Iraq, Libya, Somalia, Sudan, and Yemen; however, these revocations may not yet be annotated in the system. Please ensure that this memorandum and attached information are immediately disseminated to all ERO employees within your respective area of responsibility.

Further guidance is forthcoming, however if you have any immediate questions, please contact HQ Domestic Operations (A) Deputy Assistant Director (DAD)/East Ricardo Wong at [REDACTED] or (A) DAD/West Paul Capicchioni at [REDACTED]

CBP guidance is as follows:

(b)(6)

Wherever possible, NTC-P will coordinate the denial of boarding through Immigration Advisory Program/Joint Security Program (IAP/JSP) locations, and Regional Carrier Liaison Groups (RCLG).

Should aliens, subject to the Executive Order, arrive at the port of entry, CBP officers are instructed to take the following actions:

Applicants bearing Non-Immigrant Visas and First Time Arriving Immigrants:

- (1) All case processing will be recorded in Secure Integrated Government Mainframe Access (SIGMA) system, according to current policy/procedure.
- (2) Subjects will be allowed to withdraw their application for admission on Form I-275, *without a sworn statement*. All other procedures pertaining to the processing of Form I-275 withdrawal cases apply.
- (3) Should the alien decline to withdraw their application for admission, the alien will be placed in Expedited Removal in accordance with standard operating procedures.
- (4) **Aliens claiming fear of return will be referred to an asylum officer, and processed for Expedited Removal/Credible Fear (ERF). Aliens processed under ERF procedures will be referred to ERO for detention. Field Offices should clearly indicate to both CIS and ERO that aliens are subject to Executive Order during the referral process.**

Returning Residents.

- (1) Lawful Permanent Residents should be referred for TTRT/CTR examination and held at the port of entry until an exemption to the Executive Order is granted. The authority to grant an exemption has been delegated to the Commissioner of CBP, and further delegated to Directors of Field Operations and SES Port Directors. Once an exemption has been granted results of TTRT/CTR exam should be notated in CSIS with the following language: *Individual is subject to Presidential Executive Order and barred from entry pursuant to 212(f) of the INA but has been granted an exemption per (insert DFO/SES PD).*

Refugees, Asylees, Unaccompanied Children, and subjects returning to the US with Advanced Parole:

- (1) Aliens from the above group who are prevented from entry solely as a result of the Executive Order, should be referred for TTRT/CTR examination and held at the port of entry until such time as an exemption to the Executive Order can be obtained. This exemption falls to the Secretary of State and Secretary of Homeland Security. Further guidance will be forthcoming on processing these exemptions.

Individuals who fall within any of the above may not be paroled, which includes port parole and deferred inspection. To the extent that there is an emergent medical issue related to an alien who falls within the Executive Order, CBP officers must accompany the alien for any medical care.

Returning aliens ineligible who withdraw their application for admission:

- (1) Aliens arriving via air or sea: Commercial carriers are required to remove foreign aliens found ineligible for entry under this order pursuant to 241(c)(1) of the INA.
- (2) Aliens arriving via land will be returned per current established procedures with the contiguous country.

Gerard J. Mekjian
Supervisory Asylum Officer / Anti-Human Trafficking Program Coordinator
Refugee, Asylum & International Operations
DHS/CIS
Newark Asylum Office
1200 Wall Street West, 4th Floor
Lyndhurst, NJ 07071

(b)(6)



(b)(6)

From: Radel, David M
Sent: Monday, January 30, 2017 7:06 AM
To: #ZLA All Employees
Subject: RE: Recent Executive Order

Importance: High

One new instruction for APSO: If any individual is referred for us for CF/RF processing who was denied admission as a result of the EO, please notify me, Marianne, and Lisa ASAP (so that we can then notify HQASM). We may proceed with CF/RF processing in these cases unless instructed otherwise. Thank you, David

From: Radel, David M
Sent: Sunday, January 29, 2017 12:48 PM
To: #ZLA All Employees
Subject: Recent Executive Order

Hello All:

Effective immediately, we have been instructed to prevent any asylum decision document from being issued in person or by mail to a national of any of the following countries unless or until we are instructed otherwise:

Syria, Iraq, Iran, Somalia, Yemen, Sudan, and Libya

Please ensure that until further notice, no applicant from the countries above is served as asylum decision document in person or by mail. Any cases PUSHing should get mail-out notices and the cases will remain pending with out office until further notice.

You and your team members should continue to process these cases up to the point of decision service, but may not serve the decision documents at this time.

At this time, we may continue to serve APSO decision documents on individuals from these countries, just not asylum decision documents.

If you have any questions, please let me know.

Thank you,
David.

Lonegan, Bryan K

From: Ruppel, Joanna
Sent: Friday, February 03, 2017 3:02 PM
To: RAIO - ALL1
Subject: Executive Order and Refugee Processing

RAIO Colleagues,

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Thank you for your support, flexibility and patience.

Joanna

Joanna Ruppel
Acting Associate Director
USCIS Refugee, Asylum and International Operations Directorate

 (b)(6)

To: [REDACTED]
Cc: [REDACTED]
Subject: RE: CBP Sworn Statements

(b)(6)

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Sent: Monday, January 30, 2017 11:12 AM
To: Lonegan, Bryan K
Cc: Katz, Jonathan E; Lay, Dorothea B (Thea); Ooi, Maura M
Subject: RE: CBP Sworn Statements

Saturday

Gerard J. Mekjian
Supervisory Asylum Officer / Anti-Human Trafficking Program Coordinator
Refugee, Asylum & International Operations
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[REDACTED]
(b)(6)

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Cc: Katz, Jonathan E; Lay, Dorothea B (Thea); Ooi, Maura M
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Supervisory Asylum Officer / Anti-Human Trafficking Program Coordinator
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[REDACTED]
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Subject: Guidance on Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States"

Effective immediately, and pursuant to Executive Order entitled, "*Protecting the Nation from Foreign Terrorist Entry into the United States*" (January 27, 2017), all entry into the United States for aliens who are nationals from Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen is hereby suspended in accordance with Section 212(f) of the INA. This includes all non-immigrant classifications, with the exception of those foreign nationals traveling on diplomatic visas, NATO visas, C2 visas for travel to the United Nations, G1, G2, G-3, and G-4 visas. This also includes all immigrant classes of admission, returning resident aliens, refugees, and asylees.

U.S. Customs and Border Protection has provided the following and attached guidance to its employees. Furthermore, the Department of State provided CBP with a letter provisionally revoking all immigrant and non-immigrant visas for nationals of Iran, Iraq, Libya, Somalia, Sudan, and Yemen; however, these revocations may not yet be annotated in the system. Please ensure that this memorandum and attached information are immediately disseminated to all ERO employees within your respective area of responsibility.

Further guidance is forthcoming, however if you have any immediate questions, please contact HQ Domestic Operations (A) Deputy Assistant Director (DAD)/East Ricardo Wong at [REDACTED] or (A) DAD/West Paul Capicchioni at [REDACTED]

(b)(6)

CBP guidance is as follows:

Wherever possible, NTC-P will coordinate the denial of boarding through Immigration Advisory Program/Joint Security Program (IAP/JSP) locations, and Regional Carrier Liaison Groups (RCLG).

Should aliens, subject to the Executive Order, arrive at the port of entry, CBP officers are instructed to take the following actions:

Applicants bearing Non-Immigrant Visas and First Time Arriving Immigrants:

- (1) All case processing will be recorded in Secure Integrated Government Mainframe Access (SIGMA) system, according to current policy/procedure.
- (2) Subjects will be allowed to withdraw their application for admission on Form I-275, *without a sworn statement*. All other procedures pertaining to the processing of Form I-275 withdrawal cases apply.
- (3) Should the alien decline to withdraw their application for admission, the alien will be placed in Expedited Removal in accordance with standard operating procedures.
- (4) **Aliens claiming fear of return will be referred to an asylum officer, and processed for Expedited Removal/Credible Fear (ERF). Aliens processed under ERF procedures will be referred to ERO for detention. Field Offices should clearly indicate to both CIS and ERO that aliens are subject to Executive Order during the referral process.**

Returning Residents,

- (1) Lawful Permanent Residents should be referred for TTRT/CTR examination and held at the port of entry until an exemption to the Executive Order is granted. The authority to grant an exemption has been delegated to the Commissioner of CBP, and further delegated to Directors of Field Operations and SES Port Directors. Once an exemption has been granted results of TTRT/CTR exam should be notated in CSIS with the following language: *Individual is subject to Presidential Executive Order and barred from entry pursuant to 212(f) of the INA but has been granted an exemption per (insert DFO/SES PD).*

Refugees, Asylees, Unaccompanied Children, and subjects returning to the US with Advanced Parole:

- (1) Aliens from the above group who are prevented from entry solely as a result of the Executive Order, should be referred for TTRT/CTR examination and held at the port of entry until such time as an exemption to the Executive Order can be obtained. This exemption falls to the Secretary of State and Secretary of Homeland Security. Further guidance will be forthcoming on processing these exemptions.

Individuals who fall within any of the above may not be paroled, which includes port parole and deferred inspection. To the extent that there is an emergent medical issue related to an alien who falls within the Executive Order, CBP officers must accompany the alien for any medical care.

Returning aliens ineligible who withdraw their application for admission:

- (1) Aliens arriving via air or sea: Commercial carriers are required to remove foreign aliens found ineligible for entry under this order pursuant to 241(c)(1) of the INA.
- (2) Aliens arriving via land will be returned per current established procedures with the contiguous country.

Gerard J. Mekjian
Supervisory Asylum Officer / Anti-Human Trafficking Program Coordinator
Refugee, Asylum & International Operations
DHS/CIS
Newark Asylum Office
1200 Wall Street West, 4th Floor
Lyndhurst, NJ 07071



(b)(6)

Shirk, Georgette L

From: Groom, Molly M
Sent: Saturday, January 28, 2017 11:41 AM
To: Busch, Philip B; Zengotitabengoa, Colleen R; Lay, Dorothea B (Thea); Whitney, Ronald W
Subject: FW: Executive Order
Attachments: Executive Order PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES - 01272017.docx

We could add on or develop our own.

From: Renaud, Daniel M
Sent: Saturday, January 28, 2017 12:34:16 PM
To: Walters, Jessica S
Cc: Neufeld, Donald W; Ruppel, Joanna; Young, Todd P; Slattery, Shannon E; Valverde, Michael; Levine, Laurence D; Groom, Molly M
Subject: FW: Executive Order

FOD will be using the attached matrix to help identify questions and track implementation timelines. You may find is useful as well as we identify questions, develop guidance, and implementation plans.

Daniel M. Renaud
Associate Director | Field Operations Directorate
U.S. Citizenship and Immigration Services
Department of Homeland Security

From: Slattery, Shannon E
Sent: Saturday, January 28, 2017 12:16:07 PM
To: Valverde, Michael; Renaud, Daniel M
Cc: Farnam, Julie E; Kvortek, Lisette E
Subject: RE: Executive Order

The attached document is a matrix breaking down the EO into its component parts and action items. I've added columns for QAs and started compiling those I saw come across this morning and some early ones I saw from Div. 1.

The Policy and general objectives language at the beginning pulls key language from the EO for quick reference when we're drafting statements. The date conversion chart indicates the calendar dates associated with any specific timeframe mentioned in the EO.

I am working to convert this to Excel over the weekend so it's a little more scalable, but wanted to pass it on for initial use.

Please let me know if you have any questions or see anything that needs editing.

Thanks,

Shannon E. Slattery

Field Operations Directorate | U.S. Citizenship and Immigration Services

Office [REDACTED]

(b)(6)

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From: Valverde, Michael

Sent: Saturday, January 28, 2017 11:42 AM

To: Renaud, Daniel M; Kvortek, Lisette E

Cc: Farnam, Julie E; Slattery, Shannon E

Subject: RE: Executive Order

For section 4, do we need to take any actions prior to the "plan" described in section four being developed and implemented? And who is responsible for developing the plan?

For section 6, should we adjudicate cases in TRIG hold? It doesn't seem like exemptions are forthcoming.

Michael Valverde

DHS USCIS

Field Operations Directorate, Deputy Associate Director

[REDACTED]

(b)(6)

From: Renaud, Daniel M

Sent: Saturday, January 28, 2017 11:34:15 AM

To: Kvortek, Lisette E

Cc: Valverde, Michael; Farnam, Julie E; Slattery, Shannon E

Subject: FW: Executive Order

To start and just on this part of the EO:

1. Are the following forms impacted: N-400s, N-336, I-601A, I-131, I-765, N-565, I-130, ...?
2. Should we deschedule oath ceremonies for individuals from the 7?
3. How do we handle N-400s 120+ days from interview?
4. Should we stop RFEs?
5. Should we stop scheduling interviews?

Daniel M. Renaud

Associate Director | Field Operations Directorate

U.S. Citizenship and Immigration Services

Department of Homeland Security

From: Renaud, Tracy L

Sent: Saturday, January 28, 2017 11:21:12 AM

To: Ruppel, Joanna; Neufeld, Donald W; Scialabba, Lori L; Renaud, Daniel M; Strack, Barbara L; Davidson, Andrew J;

Emrich, Matthew D

Cc: McCament, James W; Nicholson, Maura J; Kliska, Jennifer R; Walters, Jessica S

Subject: RE: Executive Order

Everyone should be compiling a list of all of their questions and getting them to Jess so Lori and I have a complete list. If there are URGENT questions that we need answers to before Monday go ahead and flag those for us but I'm not sure the Department is going to get to us immediately, they are likely dealing with issues at the POEs which have a bit more urgency. I did send the question of whether this impact naturalization or not to the Department in an attempt to get an answer this weekend only because we have oath ceremonies scheduled for Monday.

Tracy L. Renaud
Acting Deputy Director
US Citizenship & Immigration Services
Department of Homeland Security

[redacted] (desk)

(b)(6)

From: Ruppel, Joanna

Sent: Saturday, January 28, 2017 9:54 AM

To: Neufeld, Donald W; Scialabba, Lori L; Renaud, Daniel M; Higgins, Jennifer; Strack, Barbara L; Davidson, Andrew J; Emrich, Matthew D

Cc: Renaud, Tracy L; McCament, James W; Nicholson, Maura J; Kliska, Jennifer R

Subject: RE: Executive Order

I would also like to flag I-730s. While adjudication does not give status to those outside the US, it does for those inside. Also, since part of the directive is to reviewing to enhance information we collect and screening, we likely will be proposing changes to the I-730 process, to include revisions to the form and the I-730A, which would be completed by the beneficiary. We have mock ups and can move quickly, but need to think first about those in pipeline. Maura has giving directive to staff outside US to cancel pick up document pickups for 730s for next week.

We are working on further guidance and of course will coordinate with SCOP.

State has also issued guidance. Will forward.

Joanna

Joanna Ruppel
Chief, International Operations Division
U.S. Citizenship and Immigration Services

[redacted] (b)(6)

From: Neufeld, Donald W

Sent: Friday, January 27, 2017 5:34:17 PM

To: Scialabba, Lori L; Renaud, Daniel M; Higgins, Jennifer; Ruppel, Joanna; Strack, Barbara L; Davidson, Andrew J; Emrich, Matthew D

Cc: Renaud, Tracy L; McCament, James W

Subject: RE: Executive Order

I can do that but I think it's the same as what I've mentioned. It would be good to have time to consult with others. Can I get it to you on Monday?

And, in the meantime can I get something to the centers this weekend? I can share a draft email tomorrow.

From: Scialabba, Lori L
Sent: Friday, January 27, 2017 8:04:01 PM
To: Neufeld, Donald W; Renaud, Daniel M; Higgins, Jennifer; Renaud, Daniel M; Ruppel, Joanna; Strack, Barbara L; Davidson, Andrew J; Emrich, Matthew D
Cc: Renaud, Tracy L; McCament, James W
Subject: RE: Executive Order

O.K. Take Jennifer off the email chains. Don, I want one document with all your issues. Same goes for Dan, Joanna/Barbara and Matt/Andrew. We'll start regular meetings next week.

Lori

From: Neufeld, Donald W
Sent: Friday, January 27, 2017 8:00 PM
To: Scialabba, Lori L; Renaud, Daniel M; Higgins, Jennifer
Cc: Renaud, Tracy L; McCament, James W
Subject: RE: Executive Order

For clarity, what would be suspended are I-485s, I-539s, I-129s and I-131s. If I'm missing something please let me know.

From: Neufeld, Donald W
Sent: Friday, January 27, 2017 7:56:01 PM
To: Scialabba, Lori L; Renaud, Daniel M; Higgins, Jennifer
Cc: Renaud, Tracy L; McCament, James W
Subject: RE: Executive Order

I can get word out over the weekend to the centers to suspend processing. I just need the list of 7 countries to include in my message. The Directors are already on notice of the possibility. I would exclude from the suspension any petitions for beneficiaries abroad and TPS/DACA.

From: Scialabba, Lori L
Sent: Friday, January 27, 2017 7:31:26 PM
To: Neufeld, Donald W; Renaud, Daniel M; Higgins, Jennifer
Cc: Renaud, Tracy L
Subject: RE: Executive Order

I think the answer to the first two is yes they are impacted for the 7 countries identified. Not sure about petitions for beneficiaries abroad. I'll ask.

From: Neufeld, Donald W
Sent: Friday, January 27, 2017 7:26 PM
To: Scialabba, Lori L; Renaud, Daniel M; Higgins, Jennifer

Cc: Renaud, Tracy L
Subject: RE: Executive Order

Thanks for sending this, Lori.

As we've discussed, the most urgent question is whether adjustments and extensions or changes of nonimmigrant status are impacted. Separately, is there any impact on petitions for beneficiaries abroad since we would not be determining admissibility? I would think not, but it would be good to have clarity.

From: Scialabba, Lori L
Sent: Friday, January 27, 2017 5:59:36 PM
To: Renaud, Daniel M; Higgins, Jennifer
Cc: Renaud, Tracy L; Neufeld, Donald W
Subject: RE: Executive Order

I think that's o.k. and going forward don't schedule these for interviews.

From: Renaud, Daniel M
Sent: Friday, January 27, 2017 5:47 PM
To: Scialabba, Lori L; Higgins, Jennifer
Cc: Renaud, Tracy L; Neufeld, Donald W
Subject: RE: Executive Order

If we can define "suspend processing" as "suspend prior to approval", then one option would be to continue with the interviews, since it is likely we have some that are scheduled as soon as Monday for affected applicants and then hold the cases post interview. We are trying to scrape our schedulers (C4 and NASS) to see when and where we have interviews scheduled for individuals from affected countries. We should have that sometime Monday.

Daniel M. Renaud
Associate Director, Field Operations Directorate
Department of Homeland Security | U.S. Citizenship and Immigration Services

From: Scialabba, Lori L
Sent: Friday, January 27, 2017 12:43 PM
To: Higgins, Jennifer
Cc: Renaud, Tracy L; Neufeld, Donald W; Renaud, Daniel M
Subject: FW: Executive Order

(b)(5)

FYI. I think Andrew might be right in terms of what is meant but [REDACTED]

[REDACTED]

Don't know if you can get any clarification but DHS HQ needs to know what's going on.

From: Davidson, Andrew J
Sent: Friday, January 27, 2017 12:37 PM
To: Renaud, Tracy L
Cc: Neufeld, Donald W; Renaud, Daniel M; Scialabba, Lori L
Subject: Executive Order

Tracy,

It is my understanding that POTUS will sign the "Protecting the Nation from Terrorist Attacks by Foreign Nationals" order today at 4:30pm. In complying with the EA I believe we need immediate clarification in Section 3 (c) relative to the 30 day suspension of processing immigrants and non-immigrants from the designated countries of interest and if this extends to processing of permanent resident applications. Though the EA states "immigrant and non-immigrant entry into the United States", once we grant an adjustment we "admit" that person. [REDACTED] (b)(5)

[REDACTED] We just need to clarify if by extension this applies to our product lines. If this is the case then Don and Dan will need to get guidance to the Field to put these adjudications on hold. Other than the refugee suspension that appears fully deployed on our end this appears the most urgent clarification we need relative to the EAs.

Thanks,

Andrew Davidson
Acting Deputy Associate Director
Fraud Detection and National Security Directorate
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
111 Massachusetts Avenue, NW
Washington, DC 20529

[REDACTED] (b)(6)